



30 Bank Street  
PO Box 350  
New Britain  
CT 06050-0350  
06051 for 30 Bank Street  
P: (860) 223-4400  
F: (860) 223-4488

**House Bill 5215**  
**Judiciary Committee**  
**Public Hearing: 2/24/13**

**TESTIMONY OF SUZANNE BROWN WALSH**  
**IN SUPPORT OF HOUSE BILL 5215**

**AAC THE CONNECTICUT UNIFORM**  
**POWER OF ATTORNEY ACT**

My name is Suzanne Brown Walsh, and I submit this testimony on behalf of the **Estates and Probate Section and the Elder Law Section of the Connecticut Bar Association** and as one of Connecticut's Uniform Law Commissioners, in **SUPPORT of HB 5215, AAC the Connecticut Uniform Power of Attorney Act** (also referred to as UPOAA). I am a past chair of both the CBA's Estates and Probate and Elder Law Sections.

At the outset, I should note that this bill applies only to financial powers of attorney – not powers of attorney for health care decisions. Health care powers of attorney are addressed in a different statute.

Connecticut's existing short form power of attorney law was enacted in 1965 and is quite outdated. For example, it has no references to IRA accounts, because they did not exist when the statute was adopted. The UPOAA modernizes and organizes its provisions more logically and with more understandable language.

A power of attorney (POA) is a legal document used by a person, called the *principal*, to name another person (the bill refers to the person as the *agent*, which is clearer than the term *attorney in fact* used in the current law) to make financial decisions and act on the principal's behalf. A power of attorney can be used to plan for future incapacity and to avoid the court appointment of conservator. A POA that remains effective after incapacity is called a *durable* one.

The UPOAA modernizes the law governing POA's in many ways. To name just a few:

- The UPOAA safeguards the principal's assets by specifying certain high-risk types of authority that can be granted to an agent only with express language. This will prevent principals from unintentionally granting overly broad authority that allows the agent to

dissipate the principal's property or alter the principal's estate plan (for example, by making gifts or amending a living trust).

- The UPOAA deters elder abuse by clearly delineating an agent's fiduciary duties – including the agent's responsibility to act in good faith, within the scope of authority granted, and according to the principal's known expectations or best interest – and providing remedies and sanctions for an agent's abuse.
- The UPOAA encourages acceptance of POAs by creating a presumption that a notarized POA is valid and stating that a person who accepts a notarized POA in good faith may rely on its terms without incurring liability. It also specifies the circumstances under which a third party (usually a financial institution) may legitimately refuse to accept a POA and provides sanctions for unlawful refusals.
- The UPOAA includes a portability provision, essential in our modern mobile society to ensure that valid POAs are accepted in other states.
- Finally, UPOAA clarifies existing law as to who may petition a court to construe the terms of a POA or review the agent's conduct.

The bill applies retroactively, so that its safeguards and innovations can apply to existing POA's. However, it does not revoke or invalidate existing POA's, so a POA executed BEFORE the effective date would remain valid until the power terminates by its own terms.

The UPOAA was drafted with extensive input from the American Bar Association Commission on Law and Aging, the American College of Trust and Estate Counsel, the National College of Probate Judges, The National Association of Elder Law Attorneys, and the American Bankers Association. It was approved by the Uniform Law Commission in the summer of 2006 and endorsed by AARP that same year. **To date, 14 jurisdictions** (Alabama, Arkansas, Colorado, Idaho, Maine, Montana, Nebraska, Nevada, New Mexico, Ohio, U.S. Virgin Islands, Virginia, West Virginia and Wisconsin) **have enacted the UPOAA, and 6 other states** (Hawaii, Iowa, Kansas, Mississippi, Pennsylvania and Washington) **have introduced it this year.**

The CT UPOAA study and drafting committee consisted of representatives from the Elder Law and Estates and Probate Sections of the Connecticut Bar Association, and from the Probate Court Administrator's office. Attorney Lois Andrews of New London chaired the group.

**Please feel free to contact me at 860-313-4928 or by e-mail at [swalsh@cl-law.com](mailto:swalsh@cl-law.com).**

Thank you for your support of this important proposal.